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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/413,923	10/07/1999	P. BRUCE NEWELL	98-1-3111P	2610

7590 05/08/2002
WILLIAM H MCNEILL
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EXAMINER

HAYNES, MACK NELSON

ART UNIT	PAPER NUMBER
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2879

DATE MAILED: 05/08/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/413,923

Applicant(s)

NEWELL ET AL.

Examiner

Mack N. Haynes

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 January 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3 and 5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3 and 5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

Applicants' amendment, filed 1/25/02, has been entered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dakin et al. (4,757,236) in view of Russell et al. (5,394,057).

With regards to claims 1 and 3, Fig. 1 as well the Abstract, col. 2, lines 34-54 and col. 3, line 37-col. 4, line 58 of Dakin et al. disclose a mercury-free, metal halide lamp having a pinch seal at each end (See Fig. 1) that comprises the following: an outer envelope (11) that contains an atmosphere selected from the group consisting of vacuum and nitrogen; and an arc discharge vessel (10) mounted therein; wherein, the vessel has an aspect ratio greater than 5 and containing a fill comprised of iodides selected from the group consisting of sodium, scandium, lithium or cesium and a buffer gas of from about 50torr to 500torr selected from the group consisting of xenon, argon and krypton. More over, Dakin et al. disclose the discharge vessel inherently comprised of fused silica (See col. 2, lines 43-47) since Dakin et al. discloses the arc tube being comprised of fused quartz, wherein quartz comprises silica.

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Yet, Dakin et al. discloses the use of end caps to seal the lamp, and does not specifically discuss metal halide lamp having pinch seals at each end.

However, metal halide lamps with fused silica envelopes having both ends that are pinch sealed for the purpose of sealing the lamp are of common knowledge in the art as evidenced by Fig. 1 of Russell et al.

Since the applicants' disclosure has failed to show that pinch sealing both ends of a metal halide lamp as opposed to using end caps to seal the lamp produces unobvious results or solves a stated problem that is outside the scope of the prior art, pinch sealing both ends of a metal halide lamp as opposed to incorporating end caps is deemed a choice in design.

Thus, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to alternatively have both ends of the metal halide lamp of Dakin et al. pinch sealed as shown by Russell et al. for the purpose of sealing the lamp.

With regards to claim 5, the lamp of Dakin et al. inherently comprises a ballast that is capable of supplying power in order for the lamp to operate.

Note-In claim 5, Applicants are incorrectly trying to invoke 112-6th paragraph (means plus function), as a result, patentable weight is given to the structure (lamp having a ballast) and not to the functional or intended use limitations.

Response to Arguments

Applicant's arguments with respect to claims 1, 3 and 5 have been considered but are moot in view of the new ground(s) of rejection.

Note- This is in reference to the newly added limitation of the lamp being pinch sealed at both ends and the applicants' argument that Dakin et al. does not disclose pinch sealed ends. See the above rejection of Dakin et al. in view of Russell et al. that addresses this argument.

Applicant's arguments filed 1/25/02 have been fully considered but they are not persuasive.

In regards to the applicants' arguments on pg. 3 in the Remarks/Arguments section, the applicants have argued that Dakin et al. does not disclose the arc tube being comprised of fused silica but rather fused quartz or polycrystalline alumina; more over, the applicants have argued that both materials are different from fused silica.

However, the examiner respectfully disagrees with the applicants' arguments. More specifically, the examiner contends that fused quartz is a form of fused silica as evidenced by definition of "silica" in the Webster's Dictionary (Webster's II, New Riverside University Dictionary), in which silica is defined as "a white, colorless crystalline compound, SiO_2 , found in quartz....". Hence, by definition, fused "quartz" is inherently a form of fused "silica". Thus, Dakin et al. discloses the arc tube being inherently being comprised of fused silica.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mack N. Haynes whose telephone number is (703) 308-5460. The examiner can normally be reached on Mon-Fri., 9:00a.m.-5:00p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nimeshkumar Patel can be reached on (703) 305-4794. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7722 for regular communications and (703) 308-7722 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-

0956.


MNH

April 20, 2002



Kenneth J. Ramsey
Primary Examiner